

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 090 OF 2013

STATE

VS

MOSESE VUETI

Counsel : **Ms J. Fatiaki for the State**
: **Mr P Tawake and Mr J. Korotini for the Accused**

Dates of Trial : **6th – 8th March 2017**

Summing Up : **14th March 2017**

Judgment : **15th March 2017**

JUDGMENT

[1] The accused, MOSESE VUETI is charged for committing Rape, contrary to Section 207 (1) and (2)(a) of the Crimes Decree No. 44 of 2009.

[2] He pleaded not guilty to the count of Rape and the ensuing trial lasted for 3 days. The complainant, her husband, Suka and her husband gave evidence for the prosecution while the accused offered evidence in support of his version of events. At the stage of closing submissions, the accused absconded and this Court decided, after a ruling to that effect, to proceed with the trial *in absentia* of the accused.

- [3] At the conclusion of the evidence and after the directions given in the summing up, the three assessors unanimously found the accused not guilty to the count of Rape.
- [4] I direct myself in accordance with the law and the evidence which I discussed in my summing up to the assessors.
- [5] Prosecution case was based primarily on the evidence of the complainant. According to her, in the mid-day of 1st September 2012 she was drinking home brew with three other males including the accused and Suka's husband. They had spent the morning of that day also drinking. By noon, the complainant was dozed off. She woke up when she felt the accused penetrated her. He was lying on top of her.
- [6] At that time they were in the sitting room of Suka's house and she could recall seeing Suka coming in and going out. She then blacked out again. She was later woken up by her daughter who noted that she was lying naked. She complained about the act of "rape" by the accused to her husband the next morning when she was sober.
- [7] The prosecution presented its case based on the theory that the accused acted recklessly on the consent of the complainant. They claim the complainant was incapable of consenting due to her high level of intoxication. The accused, having admitted sexual intercourse with the complainant, claimed that she consented and was fully awake during intercourse.
- [8] He also relied on the medical report of the complainant, in which the medical officer noted that she was feeling guilty and was in tears as initial observations. The report also indicates that there were no injuries on the genitalia of the complainant.
- [9] The three assessors have unanimously found the evidence of the prosecution was insufficient to prove that the accused was reckless in relation to the consent of the complainant beyond a reasonable doubt. Witness Suka saw them having intercourse. She admitted that the complainant was awake at that time, and did not respond when her husband called out her name. She also admitted that the complainant did not raise any cries, when she saw her.
- [10] The three assessors have obviously rejected the evidence of the prosecution as unreliable.
- [11] In my view, the assessor's opinion was not perverse. It was open for them to reach such conclusion on the available evidence. The evidence of the prosecution does not establish the fact that the accused was reckless with the consent of the complainant. There were other inconsistencies among prosecution witnesses. In addition, there were items of evidence which tend to negate the claim that the accused was reckless

with her consent. Accordingly, I concur with the unanimous opinion of the assessors.

- [12] Therefore, it is my considered view that the evidence of the prosecution, presented through the complainant, is not sufficient to establish the elements of the offence of Rape, beyond a reasonable doubt.
- [13] Accordingly, I acquit the accused Mosese Vueti from the charge of Rape and his bench warrant is therefore, recalled.
- [14] This is the Judgment of the Court.



ACHALA WENGAPPULI
JUDGE



At Suva

This 15th Day of March 2017

Solicitor for the State : ***Office of the Director of Public Prosecution, Suva***
Solicitor for the Accused : ***Legal Aid Commission, Suva***